

### **Claim Rejections-35 U.S.C. §102**

In the Office Action dated March 8, 2006, the Examiner rejected Applicant's claims 1-3, 6-7, 10-11, 14-15, 18 and 21 under 35 U.S.C. 102(b) as being anticipated by Weder (U.S. 5,307,606). In support of the rejection the Examiner stated:

The '606 reference to Weder teaches all limitations set forth in claims 1-3, 6-7, 10-11, 14-15, 18 and 21. Most importantly, Weder teaches providing a decorative covering 10 for a flower pot 38 wherein the covering can be paper, polymeric film, metallized film, laminations thereof and combinations thereof (column 1, lines 59-60; column 2, lines 34-37) and wherein the covering has an embossed pattern and/or a printed pattern on at least a portion of its upper surface 12 and/or its lower surface 14 (column 3, lines 20-26); therefore, the reference teaches that the covering has an embossed pattern on at least a portion of its first surface and a printed pattern on at least a portion of its second surface.

The before stated rejection of the Examiner is respectfully traversed in part and obviated in part. That is, the before stated rejection as applicable to claims 6-7, 10-11, 18 and 21 has been obviated in that such claims have been canceled. However, as to claims 1-3, and 14-15 the before stated rejection is respectfully traversed for the following reasons.

Both claims 1 and 14, and thus claims 2-3 and 15 which depend therefrom recite a method for providing a decorative cover for a flower pot which includes (a) providing a sheet of material having a first surface and a second surface, the sheet of material having an embossed pattern disposed upon at least a portion of the first surface, the sheet of material being selected from the group consisting of paper, polymeric film, metallized film, laminations

thereof and combinations thereof. Claims 14 and 15 in addition to the above, recite that the sheet of material further has a printed pattern disposed on at least a portion of the second surface thereof. In addition, each of the claims further recite (b) providing a flower pot having an upper end, a lower end and an outer peripheral surface; and (c) forming a sheet of material about the outer peripheral surface of the flower pot to provide a decorative covering wherein at least a portion of the embossed pattern is visible on the decorative covering. Claims 14 and thus 15 which depends therefrom, further recite that at least a portion of the printed pattern is also visible on the decorative covering.

Contrary to the Examiner's position, Weder '606 does not disclose or teach providing a sheet of material as recited in Applicant's claims 1 and 14, providing a flower pot, and thereafter forming the sheet of material about the outer peripheral surface of the flower pot to provide the decorative covering. (emphasis added) The '606 reference to Weder, while teaching providing a decorative covering for a flower pot wherein the decorative covering can be paper, polymeric film, metallized film, laminations and combinations thereof, and wherein the covering can have an embossed pattern and/or a printed pattern on at least a portion thereof, teaches the formation of a pre-formed flower pot cover adapted to receive a flower pot wherein the pre-formed flower pot covering provides the decorative cover for the flower pot. (emphasis added) There is no teaching or suggestion in the Weder '606 reference to form the decorative covering from a sheet of material without requiring that the sheet of material first be pre-formed into a decorative covering.

Therefore, it is respectfully submitted that Weder '606 does not teach each and every limitation of claims 1 and 14, and thus claims 2-3 and 15 which depend therefrom and as such Weder '606 is not a proper reference to reject Applicant's claims under 35 U.S.C. 102. Furthermore, it is respectfully submitted that Weder '606 does not teach and thus can't render obvious the method of providing a decorative cover for a flower pot as recited in each of Applicant's claims now pending in the case because Weder '606 teaches that the sheet of material 10 with the sheet extension 28 connected thereto is placed between a male and female die for other forming means and formed into a pre-formed pot cover (Fig. 3). Thus, it becomes apparent that Weder '606 teaches the formation of a pre-formed flower pot cover, not the formation of a decorative cover for a flower pot wherein a sheet of material is formed about the outer peripheral surface of the flower pot to provide the decorative covering.

For the reasons set forth above, it is respectfully requested that the Examiner withdraw his rejection to claims 1-3 and 14-15 now pending in the application and pass such claims to issue.

#### **Claim Rejections-35 U.S.C. §103**

In the Office Action the Examiner rejected Applicant's claims 1-3, 6-7, 10-11, 14-15, 18 and 21 under 35 U.S.C. 103(a) as being unpatentable over Weder '606 in view of Rusincovitch et al. (US 5487929).

In support of the rejection the Examiner stated:

If for some reason it is not taken that Weder '606 teaches that the covering has an embossed pattern on at least a portion of its first surface and a printed pattern on at least a portion of its second surface, such would have been obvious to one of ordinary skill in the art at the time of the invention because it is known in the decorative covering art to provide an embossed pattern on the upper/first surface of the covering and a printed pattern on the lower/second surface of the covering in order to provide a decorative pattern of high quality, as taught by Rusincovitch (column 5, lines 34-40).

The before stated rejection of Applicant's claims is obviated in part and respectfully traversed in part by the present amendment. That is, claims 6-13, 18 and 21 have been canceled by the present amendment and thus the rejection concerning same has become moot. As to claims 1-3 and 14-15, the rejection is respectfully traversed for the following reasons.

As previously stated, Weder '606 does not disclose, teach or even suggest the steps for providing a decorative cover for a flower pot as recited in Applicant's claims 1-3 and 14-15. That is, Weder '606 teaches a pre-formed flower pot which is used as a decorative covering for a flower pot. (emphasis added) There is no suggestion or teaching in Weder '606 of forming a sheet of material about the outer peripheral surface of the flower pot to provide a decorative cover as recited in each of Applicant's claims 1-3 and 14-15. Therefore, for the reasons set forth herein before, is respectfully submitted that Weder '606 is an improper reference and does not function to render Applicant's invention as claimed obvious within the meaning of 35 U.S.C. §103(a).

The Examiner has recognized the deficiencies of Weder '606 and attempted to supply such deficiencies with isolated teaches of Rusincovitch et

al. (US 5487929). Rusincovitch et al. discloses a PSA-backed decorative sheet which is decorated on one side and has, on the other or backside, PSA for adhesion and projections which act as spacers between the PSA and the wall to prevent full contact between the wall and the PSA, whereby the wall covering can be initially repositioned by sliding the surface of the projections across the wall surface until the desired location is achieved. Then, by applying sufficient pressure to the outer decorative surface the separation created by the projections between the PSA and the wall is overcome and the PSA, not otherwise in contact with the wall, adheres to the wall.

From the above, it becomes clear the Rusincovitch et al. is unrelated art as same would apply to a method for providing a decorative covering for a flower pot. Further, there is no suggestion or rationale in either Weder '606 or Rusincovitch et al. to combine certain selective portions of the secondary reference with the primary reference in an effort to reconstruct a method for providing a decorative cover for a flower pot over which one could maintain Applicant's claimed invention is obvious. Such rationale and reconstruction of the references is not proper and contrary to law. That is, even if one were to employ the sheet of material disclosed in Rusincovitch et al. for use in the process disclosed in Weder '606, one would at most obtain a pre-formed flower pot cover, not a decorative cover for a flower pot wherein the decorative cover is formed from the sheet of material which is disposed about the outer surface of the flower pot as required in each of Applicant's claims now pending in the application. Further, if one were to use the sheet of material having a PSA-back

decorative sheet as required in Rusincovitch et al. as the sheet of material to form the pre-formed flower pot covers of Weder '606, problems would exist in that the PSA-backed decorative sheet of material would adhere to the mold a condition which would be undesirable.

Therefore, for the reasons set forth above, it is respectfully submitted that the Examiner's rejection as applicable to claims 1-3 and 14-15 under 35 U.S.C. (a) as being unpatentable over Weder '606 in view of Rusincovitch et al. (U.S. 5487929) is improper and contrary to law. Therefore, it is respectfully requested that the Examiner withdraw the rejection to such claims and pass such claims to issue.

**Claims 4-5, 8-9, 12-13, 16-17, 19-20 and 22-23**  
**under 35 U.S.C. 103(a)**

In the Office Action dated March 8, 2006, the Examiner rejected Applicant's claims 4-5, 8-9, 12-13, 16-17, 19-20 and 22-23 under 35 U.S.C. 103(a) being unpatentable over Weder '606, or alternatively Weder '606 and Rusincovitch et al., and further in view of Weder (EP 582853). In support of the rejection, the Examiner stated:

It would have been obvious to provide the covering of Weder '606 as a roll of material that is unrolled and then cut into sheets, or alternatively, as a pad of sheets from which individual sheets are disconnected because such is known in the flower pot decorative covering art, as taught by Weder '853 (column 16, lines 15-26).

The before stated rejection of the Examiner is obviated in part and transverse in part by the present amendment. That is, claims 8-9, 12-13, 19-20 and 22-23 has been canceled by the present amendment and thus the

rejection of such claims have become moot. As to the remaining claims, namely, 4-5 and 16-17, the rejection is respectfully traversed for the following reasons.

Claims 4 and 5 each depend from claim 1 and thus contain, in addition to the limitations set forth and such claims, each and every limitation of independent claim 1. Similarly, claims 16 and 17 depend from claim 14 and thus contain, in addition to the limitations set forth in such claims, each and every limitation recited in claim 14. Thus, the method set forth in claims 4 and 5 and 16 and 17 each require the forming of the sheet of material about the flower pot to provide a decorative covering.

As previously stated, Weder '606 discloses a pre-formed flower pot cover wherein the sheet of material is formed utilizing a male and female mold wherein a sheet of material is formed into a pre-formed flower pot cover which is configured to receive a flower pot. However, there is no teaching or even suggestion of using the sheet of material and forming the sheet of material about the flower pot to form a decorative cover as recited in Applicant's claims.

For the reasons set forth hereinbefore, Rusincovitch et al. does not supply the deficiency of Weder '606. As previously stated, Rusincovitch et al discloses nothing more than a PSA-backed decorative sheet having decorations on one side and on the other a back side PSA for adhesion. The sheet of material is provided with projections which have spacers between the PSA and the wall to prevent full contact between the wall and the PSA whereby the wall covering

can be initially repositioned by sliding the surface of the projections across the wall surface until a desired location is achieved. Then by applying sufficient pressure to the outer decorative surface the separation created by the projections between the PSA and the wall is overcome and the PSA, not otherwise in contact with the wall, contacts and adheres to the wall.

Thus it becomes clear that there is no motivation for combining selective teachings of Rusincovitch et al. with Weder '606 in order to reconstruct a method for providing a decorative covering for a flower pot wherein one of the steps involves forming the sheet of material about the outer peripheral surface of the flower pot as recited in each of Applicant's claims. Even if one accepts the Examiner's position that it would be obvious to provide Weder '606 as a roll of material that is unrolled and then cut into sheets of material, such reference still is void of any teaching of using the sheet of material other than in the formation of a pre-formed flower pot cover. That is, there is no teaching or suggestion of forming the sheet of material about the outer peripheral surface of the flower pot to provide the decorative covering as recited in each of Applicant's claims.

The Weder '582 patent does not supply the deficiencies of either of the before mentioned primary or secondary references. The '582 patent is similar to the '606 Weder patent in that it teaches a cover forming apparatus for forming a flower pot or flower pot cover from a sheet of material by engaging a sheet of material about the outer surface of a mold, die or pot. The cover



forming apparatus includes a plurality of pivotally forming members resting in a surface which supports a sheet of material upon which is positioned a flower pot mold or flower pot. When the forming members are pivotally moved from the storage position to an extended position, the forming members cause the sheet of material to be pressed to or engage with the mold or pot.

Therefore, it is respectfully submitted that there is no teaching in either Weder '606, Rusincovitch et al. or Weder '582 to provide a method for providing a decorative cover for a flower pot as recited in each of Applicant's claims now pending in the case. Accordingly, it respectfully requested that the Examiner withdraw the rejection of the claims now pending in the case and pass such claims to issue.

**Rejection of Claims 1-23 under 35 U.S.C. 103(a)**

The Examiner's rejection of claims 1-23 under 35 U.S.C. 103(a) as being unpatentable over Weder '853 in view of Weder '606 and/or Rusincovitch et al. is obviated in part and respectively traversed in part. That is, the rejection as applicable to claims 6-13 and 18-23 have been obviated in that such claims have been canceled. However, as to the remaining claims, namely, claims 1-5 and 14-17, the before stated rejection is respectfully traversed for the following reasons. Weder '582 discloses a cover forming apparatus having pivotally forming members which are employed to secure a sheet of material about the outer surface of a mold, die or pot. The cover forming apparatus includes a plurality of pivotally forming members resting in a surface which supports a

sheet of material upon which is positioned a flower pot mold or flower pot. Thus, when the forming members are pivotally moved from the storage position to the extended position, the forming members cause the sheet of material to be pressed to or engage with the mold or pot.

The Examiner has acknowledged the deficiencies of Weder '853 and has attempt to supply such deficiencies with selected dissected portions of Weder '606 and/or Rusincovitch et al. However, there is no teaching or even suggestion in either Weder '853, Weder '606 or Rusincovitch to modify the teachings of the Weder '853 apparatus in order to reconstruct a method for providing a decorative cover for a flower pot as recited in each of Applicant's claims 1 and 14, and thus the claims which depend therefrom. In addition, for the reasons set forth above, it is respectfully submitted that Weder '606 and/or Rusincovitch et al teach away from the inventive concept as recited in Applicant's claims now pending in the application. Therefore, it is respectfully requested that the Examiner withdraw the rejection as applicable to claims 1-5 and 14-18 and pass such claims to issue.

#### **Non-statutory Double Patenting Rejection**

In the Office Action dated March 8, 2006, the Examiner rejected Applicant's claims 1-23 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent number 5,752,360 in view of Weder '606 and/or Rusincovitch et al. In support of the rejection the Examiner stated:

The '360 Patent teaches all the limitations set forth in the present claims; however, it is unclear as to whether the Patent teaches that

the flower pot covering has an embossed pattern on at least a portion of its first surface and a printed pattern on at least a portion of its second surface. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide an embossed pattern on the first surface and a printed pattern on the second surface of the covering because such is known in the decorative covering art, as taught by Weder '606 and/or Rusincovitch, for providing a decorative pattern of high quality.

The before stated rejection of the Examiner has applicable to claims 1-5 and 14-17 has been obviated by the filing herein of a terminal disclaimer in compliance with 37 C.F.R. 1.321(c) or 1.321(d). As to claims 6-13 and 18-22, such claims have been canceled by the present amendment so the rejection as same relates to such cancelled claims is moot.

Therefore, it is respectively requested that Examiner withdraw the rejection of claims 1-23, as applicable under non-statutory obviousness-type double patenting and pass such claims to issue.

The Examiner also rejected Applicant's claims 1-23 on the grounds of non-statutory obviousness-type double patenting as being patentable over claims 1-84 of U.S. Patent No. 6,564,507 in view of Weder '606 and/or Rusincovitch et al. In support of the rejection the Examiner stated:

The '507 Patent teaches all the limitations set forth in the present claims; however, it is unclear as to whether the Patent teaches that the covering has an embossed pattern on at least a portion of its first surface and a printed pattern on at least a portion of its second surface. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide an embossed pattern on the first surface and a printed pattern on the second surface of the covering because such is known in the decorative covering art, as taught by Weder '606 and/or Rusincovitch, for providing a decorative pattern of high quality.

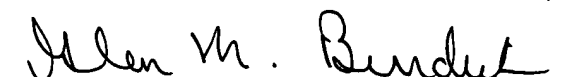
The before stated rejection has been obviated by the present amendment in that claims 6-13 and 18-23 have been canceled and a terminal disclaimer in compliance with 37 C.F.R. 1.321(c) or 1.321(d) is filed herein and thus, as applicable to claims 1-5 and 14-17 overcomes the non-statutory double patenting rejection set forth above.

### **CONCLUSION**

For the reasons set forth herein above, it is Applicant's belief that the claims now pending in the case, namely claims 1-5 and 14-17 are patentable over the art of record. As to the obviousness-type double patenting rejections, properly filed terminal disclaimers are submitted herewith which overcome such rejections. Therefore, it is respectfully submitted that claims 1-5 and 14-17 are in condition for allowance and it is respectfully requested that the Examiner pass such claims to issue.

This intended to be a full and complete response to the Office Action dated March 8, 2006. However, should the Examiner have any questions, the Examiner is invited to contact Applicant's attorney.

Respectfully submitted,

  
Glen M. Burdick,  
Reg. No. 24,230  
DUNLAP CODDING & ROGERS, P.C.  
P.O. Box 16370  
Oklahoma City, Oklahoma 73113  
Telephone: 405/607-8600  
Facsimile: 405/607-8686

Attorney for Applicant